

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	4:09CR3084
	)	
Plaintiff,	)	
	)	MEMORANDUM
v.	)	AND ORDER
	)	
JUSHAN FARNOLD MALONE,	)	
	)	
Defendant.	)	
	)	

This matter is before the court on two memos issued by the clerk of the court. In one memo (filing [56](#)) the clerk inquires whether the defendant will be allowed to proceed in forma pauperis (“IFP”) on appeal. In the other memo (filing [55](#)), the clerk notes that the defendant’s notice of appeal (filing [54](#)) appears to be untimely and advises that the appeal will not be forwarded to the Eighth Circuit until a ruling has been made on the issue of timeliness. See [United States v. Anna](#), 843 F.2d 1146, 1147 (8th Cir. 1988), *abrogated by* [United States v. Watson](#), 623 F.3d 542 (8th Cir. 2010).

While the defendant’s notice of appeal was not filed within 14 days after entry of the order being appealed, and thus is untimely under [Federal Rule of Appellate Procedure 4\(b\)](#), [Watson](#) holds that [Rule 4\(b\)](#) is a non-jurisdictional claim processing rule. The clerk therefore will be directed to forward the appeal to the United States Court of Appeals for the Eighth Circuit without this court first making a determination of whether there is good cause or excusable neglect for granting the defendant an extension of time to file a notice of appeal under [Rule 4\(b\)\(4\)](#).

Regarding the defendant’s IFP status, the court finds that the defendant may proceed in forma pauperis on appeal because he was determined to be financially

unable to obtain an adequate defense in this criminal case and the appeal appears to be taken in good faith. See [Fed. R. App. P. 24\(a\)\(3\)](#).

Accordingly, in response to the clerk's memos (filing [55](#) and [56](#)),

IT IS ORDERED that:

1. The defendant may proceed in forma pauperis on appeal.
2. The clerk of the court shall forward the appeal to the Eighth Circuit.

December 22, 2014.

BY THE COURT:

*Richard G. Kopf*  
Senior United States District Judge